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FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the matter of

Request for Inquiry into the  
Accuracy and Reliability of  
Television Audience Ratings

RM No. 96 - \_\_\_\_\_

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## PETITION FOR INQUIRY

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*We should do what we can to help broadcasters show advertisers how many people they really serve. In this connection, I'm aware that many broadcasters believe that Nielsen Media Research, the only company of its kind, under counts younger viewers and is otherwise, in the words of NBC's chief audience researcher, "measurably deficient in reliability, accuracy and utility." If this is true, it harms free TV, harms competition, and harms the public interest. I think the FCC should look into it.*

Reed Hundt, Chairman, Federal Communications Commission

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December 11, 1996

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**RM No. 96 - \_\_\_\_\_**

**PETITION FOR INQUIRY**

The Association of Local Television Stations, Inc. ("ALTV"), hereby requests that the Commission initiate an inquiry into the accuracy and reliability of television audience ratings. ALTV is a non-profit, incorporated association of local television stations not affiliated with the three established networks, ABC, CBS, and NBC. Many ALTV member stations subscribe to services provided by Nielsen Media Research ("Nielsen"). Therefore, they have a vital interest in the accuracy and reliability of audience estimates (ratings) compiled and reported by Nielsen. The Commission also has a substantial interest in the accuracy of Nielsen's audience estimates and other reports. ALTV, therefore, urges the Commission to commence a searching inquiry into the accuracy and reliability of television audience ratings.



## • INTRODUCTION AND SUMMARY

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The accuracy and reliability of television audience ratings is a matter of considerable public interest consequence:

- The Commission makes numerous regulatory and policy decisions based on television audience ratings; and
- The economic performance of broadcast television stations, licensed by the Commission to operate in the public interest, is affected most substantially by television audience ratings.

The Commission regrettably may turn no blind eye to the accuracy of television audience ratings because:

- The market for television audience ratings no longer is competitive; and
- A rising chorus of questions has arisen about the accuracy and reliability of the audience estimates reported by the sole provider of television ratings, Nielsen Media Research ("Nielsen").

ALTV recognizes at the outset that any Commission action which might be prompted by the record compiled in an inquiry could raise novel jurisdictional questions. Nonetheless, the Commission has a clear and present basis for inquiring, whether it chooses to entertain comments on the legal jurisdictional issues now or later, after it acquires a better understanding of the factual concerns about the accuracy and reliability of current television ratings. As the Chairman has recognized:

[W]e should do what we can to help broadcasters show advertisers how many people they really serve. In this connection, I'm aware that many broadcasters believe that Nielsen Media Research, the only company of its kind, under counts younger viewers and is otherwise, in the words of NBC's chief audience researcher, "measurably deficient in reliability, accuracy and utility." If this is true,



it harms free TV, harms competition, and harms the public interest. I think the FCC should look into it.<sup>1</sup>

ALTV concurs.

ALTV also must emphasize that it seeks only accountability and improvement on the part of Nielsen Media Research. Nielsen historically has provided a sound and essential service to the television industry. Indeed, ALTV also must acknowledge that Nielsen has begun to address some of the problems which have prompted complaints from the industry.<sup>2</sup> However, with the departure of Arbitron from the television ratings business, Nielsen has become a monopoly. Monopoly power rarely breeds a lust for service quality or improvement.<sup>3</sup> Concerns among stations now have become sufficiently disconcerting to prompt ALTV to urge the Commission to follow-up on the Chairman's expression of concern. A spark of interest by the Commission, as a proxy for competition, may ignite greater interest on Nielsen's part in responding to its customers' concerns and improving its service.

Finally, by way of introduction, ALTV reminds the Commission that Nielsen also is the direct beneficiary of Commission actions. The Commission, for example, has granted Nielsen

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<sup>1</sup>Speech By Reed Hundt, chairman, Federal Communications Commission, before the National Association Of Broadcasters Annual Convention, Las Vegas, Nevada (April 16, 1996) (As Prepared For Delivery).

<sup>2</sup>See "Nielsen boosts methods," *Mediaweek* (October 28, 1996) at 41; "Viewing diary to be tested by Nielsen, Coltram," *Broadcasting & Cable* (June 17, 1996) at 48.

<sup>3</sup>Nielsen also appears to be behaving as a monopolist in the pricing of its services. See *A Brief Review of the Problems with the Nielsen Television Ratings Encountered by Local Television Stations*, ALTV staff study (August 21, 1996), attached hereto as Exhibit One, at 2-3 [hereinafter cited as *Problems*.].



authority to use line 22 of the active portion of the television video signal to transmit the Nielsen Automated Measurement of Lineup (“AMOL”) system signal identification codes.<sup>4</sup>

ALTV, therefore, urges the Commission to initiate an inquiry into the reliability and accuracy of audience estimates and other reports compiled by Nielsen. In support whereof, the following is shown:

- **THE COMMISSION MAKES NUMEROUS REGULATORY AND POLICY DECISIONS BASED ON TELEVISION AUDIENCE RATINGS DATA.**

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The Commission has a vital interest in the accuracy of television ratings data. The Commission routinely relies on audience data (now available only from Nielsen) in the context of rule makings and adjudicatory proceedings.

Recently, the Commission determined to use Nielsen Designated Market Areas (“DMAs”) in lieu of Arbitron ADIs in defining the local market areas of television stations for purposes of the Commission’s must carry rules.<sup>5</sup> The Commission previously had relied in part on the fact that a community or county was located in a Nielsen DMA in modifying a station’s local market area for must carry purposes.<sup>6</sup> In the same vein, the Commission has considered whether a community is

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<sup>4</sup>*Report and Order*, 11 FCC Rcd 7799, 7803 (1996).

<sup>5</sup>*Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 6201 (1996).

<sup>6</sup>*See, e.g., Smith Television of New York*, 10 FCC Rcd 7127, 7131 (C.S. Bur. 1995); *Greenville Television, Inc.*, 10 FCC Rcd 6491, 6493, n. 11 (C.S. Bur. 1995).



located in a Nielsen DMA in determining whether to add the community to a market listing in §76.51 of the Commission's rules.<sup>7</sup>

The Commission has turned to Nielsen's Designated Market Area ("DMA") in delineating the scope of the relevant geographic market for broadcast television for purposes of refining its local ownership rules.<sup>8</sup> The Commission also has begun making decisions with respect to requested waivers of the television ownership rules using Nielsen DMA-based factual showings.<sup>9</sup>

The Commission's recent order adopting new children's television rules cited audience data reported by Nielsen.<sup>10</sup> Nielsen data also was cited by the Commission in its decision to repeal the prime time access rule.<sup>11</sup> The Commission also relied on audience data in its decision to maintain relaxed financial interest and syndication rules.<sup>12</sup> Audience data (including Nielsen data) was central to the Commission's decisions regarding its indecency rules.<sup>13</sup>

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<sup>7</sup>See, e.g., *Memorandum Opinion and Order and Notice of Proposed Rule Making*, 8 FCC Rcd 5069, 5070 (1993).

<sup>8</sup>*Second Further Notice of Proposed Rule Making*, MM Docket No. 91-221, FCC 96-438 (released November 7, 1996) at ¶¶14-19; *Further Notice of Proposed Rule Making*, 10 FCC Rcd 3524, 3539-40 (1995).

<sup>9</sup>See, e.g., *Media/Communications Partners Limited Partnership*, 10 FCC Rcd 8116, n.3 (1995), wherein Capital Cities/ABC sought waivers of one-to-a-market rule; *Stockholders of CBS, Inc.*, FCC 95-469 (released November 22, 1995) at ¶69, n.24.

<sup>10</sup>See, e.g., *Report and Order*, 11 FCC Rcd 10660, 10665 (1996).

<sup>11</sup>See, e.g., *Report and Order*, 11 FCC Rcd 546, 577, n.126 (1995).

<sup>12</sup>*Second Report and Order*, 10 FCC Rcd 3282, 3303-3304 (1993), *aff'd sub nom. Capital Cities/ABC, Inc. v. FCC*, 29 F.3d 309 (7th Cir. 1994).

<sup>13</sup>See, e.g., *Report and Order*, 8 FCC Rcd 704, 707-708 (1993).



Similarly, in determining whether to dereserve channel 16\* in Pittsburgh, the Commission found that “WQED(TV) reaches more than 680,000 households per week, and WQEX(TV) reaches over 400,000 households per week, according to recent Nielsen ratings” and relied in part on the fact that “the combined viewing share of WQED(TV) and WQEX(TV) is double the national average for noncommercial television station viewing in a market.”<sup>14</sup>

The Commission also relies on Nielsen data in preparing its annual reports to Congress on the status of competition in the market for the delivery of video programming.<sup>15</sup> Other studies and reports by the Commission also rely on Nielsen audience and other data.<sup>16</sup> For example, the Commission also has relied on Nielsen data in its recent report on captioning and video description.<sup>17</sup>

Thus, the Commission frequently relies on Nielsen-compiled reports and data, and, therefore, has a demonstrable interest and sound basis for inquiring into the accuracy and reliability of audience estimates reported by Nielsen.

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<sup>14</sup>*Memorandum Opinion and Order*, FCC 96-314 (released August 1, 1996) at ¶¶4, 21.

<sup>15</sup>*See, e.g., Second Annual Report*, 11 FCC Rcd 2060, 2068, n.21 (1995).

<sup>16</sup>*See, e.g., Setzer, Florence, and Levy, Jonathan, Broadcast Television in a Multichannel Marketplace*, OPP Working Paper No. 26 (June 27, 1991).

<sup>17</sup>*Report*, MM Docket No. 95-176, FCC 96-318 (released July 29, 1996) at 12, n.32.



- **THE ECONOMIC PERFORMANCE OF BROADCAST TELEVISION STATIONS, LICENSED BY THE COMMISSION TO OPERATE IN THE PUBLIC INTEREST, IS AFFECTED MOST SUBSTANTIALLY BY TELEVISION AUDIENCE RATINGS.**

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The economic performance of local broadcast television is a matter of legitimate concern to the Commission. First, when broadcast ratings fail to reflect the size of broadcast audiences, local television stations and broadcast networks are handicapped in their efforts to compete with cable television and other emerging video distribution technologies. Local television stations rely exclusively on advertising revenue. Cable and other video distributors rely more heavily on subscription fees, which are insensitive to audience ratings. Second, local television stations remain unique in their status as federal licensees with defined obligations to serve the public interest. Inaccurate and unreliable ratings should not be permitted to undermine their abilities to compete in an increasingly crowded video distribution market and provide the best possible service to their communities

No other variable has as much impact on stations' financial stability and vitality as audience ratings. Local television stations rely on the Nielsen ratings to attract advertising business and establish prices. As observed by one industry critic:

Over 200 broadcast ratings services or audience research firms exist in the United States. The largest and most powerful is the A.C. Nielsen Company.

\* \* \*

There is little controversy that the Nielsen ratings are a powerful force in American broadcasting. The Nielsen ratings are considered to be official by the advertisers for the national market.<sup>18</sup>

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<sup>18</sup>Cantor, Muriel G., *Prime-Time Television Content and Control*, Sage Publications, Beverly Hills (1980) at 76.



Indeed, fluctuations in viewing levels is a matter of enormous financial consequence to the broadcast industry. Recent comments by NBC Senior Vice President for Research Nicholas Schiavone, as reported in *Mediaweek* in the wake of a recent decline in television usage reported by Nielsen, illustrate how significant ratings are to local television stations and networks:

[T]he company's declining "in-tab" rates are the culprits. In-tab rates show the percentage of homes in Nielsen's sample that deliver usable data for ratings and audience calculations. He added that in-tabs dropped significantly in October from the same time last year. The in-tab was 84% during a recent week for total day, a drop from 89% for the same period last year.

The 5% drop in in-tab has created a 3 to 4% decline in overall television usage. If you take this out through November and December, this is worth about \$100 million to the five national broadcast networks," said Schiavone.

If usage is indeed lower in the fourth quarter, it could yield a sizable amount of national advertising makegoods for advertisers, according to Schiavone. This is because networks and agencies regularly calculate ratings based on certain estimated HUT (Homes Using Television) levels. These estimates are done prior to the advertising upfront begins in the summer-and before the current lower usage and in-tab numbers revealed themselves.<sup>19</sup>

As likewise contended by CBS Television Executive Vice President, Research and Planning David Poltrack, "inaccurate audience measurement can cost CBS millions in lost ad dollars in the estimated \$ 400 million late-night TV market: 'Eight-tenths of a rating point differential in May for The Late Show with David Letterman is approximately equal to the total audience of a major cable network.'"<sup>20</sup>

Concerns about the reliability and accuracy of the Nielsen ratings, therefore, strike at the heart of the television business.

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<sup>19</sup>"Nielsen drop may cost \$100 million," *Media Daily*, (November 12, 1996).

<sup>20</sup>"CBS protests Nielsen's late-night numbers," *Broadcasting & Cable* (June 24, 1996) at 84;



- **A RISING CHORUS OF QUESTIONS HAS ARISEN ABOUT THE ACCURACY AND RELIABILITY OF THE AUDIENCE ESTIMATES REPORTED BY NIELSEN.**

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In August of this year, ALTV delineated the major areas of broadcasters' concerns about Nielsen in its *Brief Review of the Problems with the Nielsen Television Ratings Encountered by Local Television Stations* (Exhibit One). Since August, those concerns have grown. For example, Fox and NBC recently voiced concerns about declining football ratings reported by Nielsen:

Fox Broadcasting and NBC are scratching their heads over NFL football ratings, which have been down anywhere from 5 to 15% percent during certain weeks for no apparent reason. And that, in turn, has fingers pointing at audience measurer Nielsen Media Research.<sup>21</sup>

Nicholas Schiavone, senior vice president of research at NBC, stated recently in the face of an unexpected decline in reported viewing, "Most of the change in viewing patterns discussed in the past 12 months have not really been discussions of real change in behavior, but methodological artifacts from Nielsen's inability to manage their system."<sup>22</sup>

CBS has questioned its late-night ratings, pointing to inconsistencies between Nielsen's national and local audience estimates:

CBS-TV is the latest network to take Nielsen Media to task, challenging the research group's measurement of late-night TV. The network is calling for an accounting of what it says are inconsistencies in Nielsen's two forms of ratings measurement.

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<sup>21</sup>"Fox, NBC point finger at Nielsen sample base for football fumbles," *Media Daily* (October 29, 1996)("What they found out was that homes that were in the Nielsen sample in the 1995 football season that are still in the sample for the 1996 football season are watching it at the same rate," said [ senior VP of research and marketing for Fox Broadcasting Giles] Lundberg. "The problem, and the driving factor why the numbers were going down, is that the new homes are viewing football at a much lower rate than the homes that were in the sample a year ago. You don't have to be in research to draw a big question mark."); see also, "Networks Blast Nielsen, Blame Faulty ratings for Drop in Viewership," *The Wall Street Journal* (November 22, 1996) at 1.

<sup>22</sup> "Nielsen drop may cost \$100 million," *Media Daily*, (November 12, 1996).



\* \* \*

CBS contends that the two readings--the NTI national peplemeter survey and combined local NSI numbers--have produced "significantly" different estimates of network late-night audiences for the three major networks, particularly for CBS's *The Late Show with David Letterman*.<sup>23</sup>

Furthermore, deep concerns exist about the accuracy of ratings for children's programming.<sup>24</sup> These concerns have been heightened by recent reports of precipitous declines in ratings for broadcast networks' children's programming. *Advertising Age* reported shortly after the start of the new television season that

Ratings for children's broadcast TV for the new season--after only a month--are skidding downward precipitously, from 7% at ABC to a whopping 61% at CBS.

The depth and suddenness of the drop in the \$600 million kids marketplace is concerning the agency community enough that a major advertising group is undertaking a study to find out why kids aren't watching TV.

The situation is prompting media pundits to question whether CBS, like NBC before it, will abandon children's programming altogether.

\* \* \*

CBS may be taking the brunt of the ratings freefall among 2-to-11-year-olds, as defined by Nielsen Media Research. But all the networks appear to be suffering.

In comparing this year to last year--without counting the first week of this season because it started a week earlier--the results are disheartening.

ABC and Fox are off 7% each, down 0.2 of a rating point and 0.4 of a rating point, respectively. CBS' decline is from a 3.3 rating to a 1.3. WB, some of whose stations run its kids' block on Sunday morning, is down 30%, from 2.3 to 1.6.

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<sup>23</sup>"CBS protests Nielsen's late-night numbers," *Broadcasting & Cable* (June 24, 1996) at 84; see also *Media Week* (June 24, 1996) at 6 ("CBS has asked Nielsen Media Research to look into the variances between its national and local ratings. David Poltrack, CBS executive vp of research, said the network is concerned about the growing disparity between the NTI (national people meter) ratings and the sweeps ratings that are collected four times per year in 216 local markets, which can be averaged to produce ratings for network programming. Analyses of the two sets of numbers as well as a special analysis by Nielsen show that the national NTI ratings consistently report lower viewership than the diary ratings, and the disparity between the two samples is greatest on CBS.").

<sup>24</sup>See, e.g., *Brief Review of the Problems with the Nielsen Television Ratings Encountered by Local Television Stations*, *supra*, at 8-9.



The only broadcast network seeming to buck the trend is UPN. Comparing its hour of Sunday morning kids' programming last year to the same hour this year, the weblet is up from 1 to 1.4.

Kids don't even appear to be watching TV on Saturdays as much -- persons using TV in the category is down 8%, from 24 to 22. The numbers don't get better during the week. Fox's Monday through Friday kids' schedule is down 28%, and WB's is off 29%.<sup>25</sup>

Such audience trends are of considerable concern to broadcasters and add dimension to broadcasters' equally significant concern that children's audiences be accurately measured.

Therefore, concern about the accuracy and reliability of Nielsen audience data remains intense among local broadcast stations.<sup>26</sup> Moreover, local television stations' ability to secure full value for their advertising time has public interest implications which hardly may be ignored by the Commission.

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<sup>25</sup>"Children tuning out TV in alarming numbers," *Advertising Age* (October 7, 1996) at 3.

<sup>26</sup>Broadcasters are not alone in their concerns about the accuracy of Nielsen's audience estimates. An article in *Multichannel News* earlier this fall reporting on the initiation of a new cable audience measurement firm noted that:

ADcom gave Jacksonville some very preliminary ratings data in June at the Cable television Advertising Bureau conference in Atlanta - findings that confirmed cable's worst fears about local Nielsen ratings. ADcom's numbers were double, and sometimes even triple, those of Nielsen for local cable. Spooner concedes that cable's viewing might have been unusually inflated because the National Basketball Association playoffs and the National Hockey League's Stanley Cup playoffs were being televised on cable during the period covered. But there's no question that cable ad officials expect ADcom's numbers for cable to greatly exceed Nielsen's diary-based numbers, which even the veteran ratings service concedes underreport cable.

"Adcom ready to roll in Fla...," *Multichannel News* (September 9, 1996) at 1.



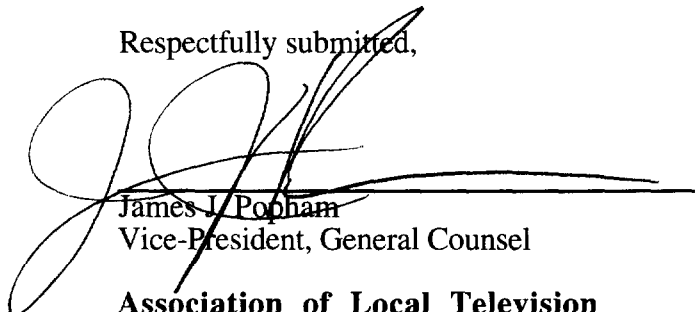
## • CONCLUSION

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In view of the above, ALTV urges the Commission to initiate promptly an inquiry into the accuracy and reliability of television audience ratings. Therein the Commission ought seek comment on specific concerns and experiences of broadcast stations and other media *vis-a-vis* Nielsen audience data and estimates. The Commission also ought seek comment from Nielsen on its mechanisms for responding to concerns about its methodology, steps it has taken to resolve those concerns, and any other factors or considerations which might enhance confidence in the accuracy of its audience rating reports and other data and reports. The Commission also may wish to raise initially the nature and extent of its jurisdiction in this area.

In any event, the Commission now has a clear, valid interest in the accuracy of Nielsen reports and audience estimates. An immediate inquiry, therefore, is a necessary and appropriate first step for the Commission.

Respectfully submitted,



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Vice-President, General Counsel

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December 11, 1996



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In the matter of

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**RM No. 96 - \_\_\_\_\_**

**EXHIBIT ONE**

**Association of Local Television Stations, Inc.  
1320 19th Street, N.W.  
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Washington, D.C. 20036**

**December 11, 1996**





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**A BRIEF REVIEW OF THE PROBLEMS  
WITH THE NIELSEN TELEVISION RATINGS  
ENCOUNTERED BY LOCAL TELEVISION STATIONS**

**prepared by  
the staff of the  
Association of Local Television Stations, Inc.**

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**August 21, 1996**



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# **A BRIEF REVIEW OF THE PROBLEMS WITH THE NIELSEN TELEVISION RATINGS ENCOUNTERED BY LOCAL TELEVISION STATIONS**

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## **I. Introduction**

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Local television stations are concerned about numerous shortcomings in Nielsen methodology and practices which often lead to inaccurate and unreliable estimates of viewing to local television stations.

Accurate and reliable viewing estimates ("ratings") are essential to local television stations' ability to compete. Local television stations rely on the Nielsen ratings to attract advertising business and establish prices. As observed by one industry critic:

Over 200 broadcast ratings services or audience research firms exist in the United States. The largest and most powerful is the A.C. Nielsen Company.

\* \* \*

There is little controversy that the Nielsen ratings are a powerful force in American broadcasting. The Nielsen ratings are considered to be official by the advertisers for the national market.<sup>1</sup>

Concerns about the reliability and accuracy of the Nielsen ratings, therefore, strike at the heart of the television business.

These concerns have become especially acute since Nielsen gained its monopoly position in the market with the departure of Arbitron from the television ratings business at the end of 1993. No longer spurred by competition, Nielsen has exploited its monopoly position. Prices have risen. Furthermore, whereas the problems enumerated below often appear difficult to solve easily, Nielsen has no competitive incentive to improve its methodologies and provide a better, more reliable service to local television stations. The main areas of concern to local television stations are as follows:

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<sup>1</sup>Cantor, Muriel G., *Prime-Time Television Content and Control*, Sage Publications, Beverly Hills (1980) at 76.



## II. Price Increases

Local television stations pay handsomely for Nielsen ratings data. The average annual price for ratings services provided by Nielsen Media Research in 1995 to UHF stations responding to an ALTV survey was \$138,497. The median annual price was \$41,643. The average annual price for ratings services provided by Nielsen Media Research in 1995 to VHF stations responding to the survey was \$328,691. The median annual price was \$100,800. In the largest markets, local television stations pay Nielsen Media Research in excess of a half-million dollars per year for their ratings reports.<sup>2</sup>

Following Arbitron's departure from the market, local television stations were confronted with demands for price increases of as much as 50-80% by Nielsen Media Research. In order to assess whether prices for Nielsen ratings were rising excessively on a widespread basis in the wake of Arbitron's departure from the market, ALTV conducted its survey of local television stations unaffiliated with ABC, CBS, and NBC. The results of the survey, conducted in 1995, revealed considerable increases in the price of Nielsen ratings reports to local television stations since 1992:

- Between 1992 and 1995, the average annual price for ratings services provided by Nielsen Media Research to stations responding to the survey increased by 25.2 per cent. The median annual price increased by 29.4 per cent. When the effect of substantial price increases believed due to shifts from diaries to meters in several markets is eliminated, then the average annual price for ratings services provided by Nielsen Media Research to stations responding to the survey increased by 18.9 per cent. The median annual price increased by 27.3 per cent.
- The most substantial increases were reported in markets 16-35 and the 101+ markets. In markets 16-35, the average annual price for ratings services provided by Nielsen Media Research to stations responding to the survey increased by 39.3 per cent. The median annual price increased by 63.3 per cent. In the 101+ markets, the average annual price for ratings services provided by Nielsen Media Research to stations responding to the

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<sup>2</sup>ALTV 1995 Television Ratings Price Survey (May 14, 1996) at 2-3. A copy is attached.



survey increased by 44.8 per cent. The median annual price increased by 44.5 per cent.<sup>3</sup>

These results actually may tend to underestimate the ultimate effect of Arbitron's departure from the market on prices charged local television stations by Nielsen Media Research. Local television stations typically enter into multi-year contracts with Nielsen Media Research for television ratings reports. Not all contracts expired in 1993, the last year Arbitron was in the television ratings business. Those ongoing agreements with their pre-Nielsen monopoly prices will continue in force until they expire. Increases under existing contracts, therefore, will be limited to cost-of-living adjustments often specified in those contracts.

Nonetheless, as noted above, Nielsen prices rose by nearly 20% between 1992 and 1995. This rate of increase is twice the rate of increase in the consumer price index over the same period of time.<sup>4</sup> Furthermore, stations with multi-year contracts expiring for the first time since 1993 continue to face Nielsen demands for enormous increases when negotiating renewal of their contracts.

### III. Problems With Sample Size and Composition

The accuracy and reliability of audience ratings depends heavily of the size and composition (or distribution) of the sample used to generate the estimates for the universe of television households and viewers. Nielsen samples in local markets often are deficient in one or both respects. For example, in one market of nearly 300,000 television households (TVHH), Nielsen audience estimates for one rating period were based on a sample of less than 200 "in-tab" households. Nielsen undoubtedly placed viewing diaries in a larger number of TVHH, but many

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<sup>3</sup>*Id.*

<sup>4</sup>*Id.* at 6.



TVHH in the sample never returned their diaries to Nielsen for tabulation (hence “in-tab”). Thus, Nielsen was left with a sample size that was too small to provide reliable results -- far below even the 300 TVHH sample considered adequate in smaller television markets.<sup>5</sup>

The lack of response may be the result of several factors. First, Nielsen offers only the most nominal consideration to TVHH selected for its samples, typically one to five dollars per TV set in the household. Second, filling out the diaries properly can be daunting and tedious.<sup>6</sup> In any event, the estimates based on samples of inadequate size lack reliability.

Lack of response also affects the composition of the sample. Ideally, the demographic characteristics of the members of the sample households would match the demographic characteristics of the universe of viewers in the market. When a TVHH selected for the sample fails to respond, the match deteriorates. This has led to undersampling of various demographic groups (“demos”). Groups usually considered underrepresented in samples include “younger” households (*i.e.*, head-of-household under 35 years of age) and minority households.<sup>7</sup> As a result, older non-minority households are over-represented in the sample. Even where diaries are returned, viewing may be poorly recorded for particular demos. The primary example is children. Thus, samples ultimately employed to make audience estimates often fail to match the demographics of the universe of TVHH.

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<sup>5</sup>Beville, Hugh Malcolm, Jr., *Audience Ratings: Radio, Television, and Cable*, Lawrence Earlbaum Associates, Hillsdale, New Jersey (1985) at 224.

<sup>6</sup>See Section III, *infra*, at 5.

<sup>7</sup> In one market, for example, the sample for the three county metro area (which is 38% African-American), only 24% of diaries were filled out by African-American TVHH.



Samples also may be deficient because significant populations are excluded from the sample. Primary examples are students residing in college dormitories and military personnel residing on military bases, neither of which are included in Nielsen samples. In many markets, this excludes large numbers of local television viewers. A similar inadequacy in sampling arises from the failure to count out-of-home viewing (*e.g.*, bars, hotels, etc.). Problems also occur when sample households go on vacation. For example, diaries have been counted as in-tab households during the final week of the ratings period even though the families were on vacation and watched no television at home.

Nielsen weighting methodologies further exacerbate the underrepresentation of difficult to reach demos (*e.g.*, kids, teens, minorities) in Nielsen samples. Nielsen will attempt to make up for the underreporting of minority and younger age group demographics by weighting the diaries they do receive. Consequently, for example, one Hispanic child diary can represent a huge demographic value in the sample. This one diary thus represents a disproportionate value as a result of Nielsen's attempt to correct the undersampling problem. In one market with a sample consisting of 22-23% children, the actual children's population is 34-35%. Any mistake, therefore, would be greatly amplified due to weighting. For example, in one instance two children in a sample household were recorded incorrectly as viewing a program of purely adult interest. The viewing reported for these two children alone resulted in the program's receiving a 17 rating among children. Putting aside the extraordinary weight accorded these two children's viewing, the other side of the equation is that the children's program they actually were watching was denied the 17 rating.



#### IV. Diary Problems

Many of the difficulties local television stations encounter with Nielsen derive from the use of viewer diaries to measure viewing and the subsequent editing of diaries by Nielsen.<sup>8</sup> The actual diaries used by Nielsen are viewed by consumers as complicated and time consuming. Furthermore, sample households receive only nominal consideration as an incentive to keep complete and accurate diaries. The responsiveness of sample households, consequently, is far from perfect. Among the common problems:

- Although Nielsen furnishes a diary for each television set in a sample household, multi-set households rarely return all of the diaries.<sup>9</sup> Usually, only the diary for the household's primary living room/family room is returned.<sup>10</sup>
- When diaries are returned with pages missing, Nielsen may not follow-up with the sample household to retrieve the missing pages. Thus, while the diary is an in-tab diary, no viewing may be reported for the time periods on the missing pages.
- Parents keep diaries for children, but tend to report viewing based on assumptions or desires about what their children were watching. For example, one mother of nine and 11 year old sons recorded that they watched *Sesame Street*, *Barney*, and *Lamb Chop* each day, despite the orientation of these shows towards pre-school age children. Parents also often fail to record much of their children's viewing in the appropriate diary.
- "Home alone" viewing by children often is not recorded.
- Only some members of the households may diligently record viewing.

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<sup>8</sup>The "editing" of diaries by Nielsen is the process of ascertaining what viewers actually were watching based on their entries in the diary, which sometimes are inconsistent, illegible, or incomplete.

<sup>9</sup>This would tend to result in underreporting of viewing on "second sets" in children's rooms, for example.

<sup>10</sup>This may tend to underreport viewing to broadcast television. The household's primary set generally would be connected to cable. Many second sets, however, are not; they are used strictly for off-air reception of local broadcast stations. When viewing to these second sets is not counted, much broadcast viewing is not reported.



- A diary keeper's failure to indicate properly (via vertical lines descending from the station and channel number in the diary listing) that viewing continued through the entire program may result in the station's receiving credit for viewing only during the first quarter-hour of the program. Thus, for example, a viewer may list *Deep Space Nine* at 8:00 p.m. and *Baywatch* at 9:00 p.m., implying (but not properly indicating) viewing to the entire programs. The station, however, would receive credit only for the first quarter-hour of each show.

Thus, diaries often fail to account for viewing by one or more members of the sample households.

Nielsen editing practices also are outmoded. As the number of sources and channels of programming available to viewers has grown, viewers are more likely to be confused about call signs and channel numbers, but still can report accurately watching specific programs. Nielsen editing practices rely heavily on a two-out-of-three rule. Viewers keeping diaries make three entries for each program: the program name, the station call sign (call letters), and the channel number. When the entries are inconsistent (*e.g.*, in Washington, *The 10 O'clock News*, WUSA, Channel 5), Nielsen must determine what the diary keeper intended. Generally, in the above example, Nielsen would see two consistent entries (*The 10 O'clock News* and Channel 5) out of three and attribute the viewing to WTTG, not WUSA.

This method of attributing viewing is increasingly unreliable. Affiliation switches, program jumps to other networks, and the increased number of available channel options has created considerable confusion among consumers. It also has made editing more problematic. For example, a diary entry shows "*NYPD Blue*, WRC, Channel 4." Although the viewer had identified the show correctly, but entered the wrong station and channel number, Nielsen would attribute (wrongly) the viewing to WRC, Channel 4. Similarly, CBS affiliates have been attributed viewing to *NFL on Fox* because diary keepers incorrectly (but understandably) identified NFL football broadcasts with CBS and its local affiliate.

Stations also have complained of very inconsistent editing by Nielsen. For example, a Nielsen editor gave a station credit for four days of viewing of a particular program although the



diary keeper entered the program in exactly the same fashion for five days. Stations also have reported inconsistent editing even within the same diary. Finally, Nielsen apparently considers its editing rules proprietary and, therefore, does not publish them.

## V. Zero Base Cell and Imputation

Nielsen measures viewing by TVHH and by actual persons viewing. Often, while viewing is recorded for a household, data with respect to the persons watching is incomplete or missing. When Nielsen records that a household is viewing, but has no data on the persons' viewing in the household, it confronts the so-called "zero base cell." Incomplete recording of personal viewing typically results from viewers' failures to punch in codes on "people meters" (thereby failing to indicate that they are watching a set which the meter records as "on") and from incomplete diary entries.<sup>11</sup> In one market recently, 55% of the instances in which meters recorded viewing for one station, no demographic information was provided.

This problem appears more acute with respect to recording of viewing by children. Children often fail to input their codes when viewing on a metered set or to record full information in diaries. For example, in the case of one family keeping diaries for Nielsen, the daughter kept a separate diary for the television in her room. In filling out the diary, however, she never recorded who was watching. Thus, Nielsen has a record of viewing by the household, but has no way of ascertaining which members of the household were watching.

Nielsen's "remedy" for this lack of complete viewing information is imputation of viewing. Viewing is imputed to each member of the household. This imputation is based on viewing

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<sup>11</sup>So-called "people meters" are used by Nielsen in its national sample.